IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 266 of 1999

in

SPECIAL CIVIL APPLICATIONNo 5606 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

B N HAJIPURA

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 266 of 1999

MR PM BHATT for Appellant No.

MR PREMAL JOSHI,AGP for Respondent No. 1

MR PARESH UPADHYAY for Respondent No. 2-3

MR JM PARDIWALA for Respondent No. 2-3

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE M.S.SHAH

Date of decision: 25/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgment and order dated 8.2.1999 passed by the learned Single Judge dismissing the petition filed by the appellant herein for a direction to the Registrar, City Civil Court, Ahmedabad, to release in favour of the appellant, increments which have been withheld from 1.4.1985 with consequential benefits.

2. The appellant was initially appointed as a Section Writer on the establishment of City Civil Court, Ahmedabad on 1.4.1980 and thereafter he was promoted as a Junior Clerk on 1.9.1981. In view of the departmental examination rules, the appellant is required to pass Lower Standard Departmental Examination. There is no dispute about the fact that the appellant appeared at the said examination, but failed to pass the same and,therefore, the appellant's increments have been withheld since 1.4.1985. The appellant, however, relied upon circular dated 12.3.1992 (Annexure C to the petition) and claimed the benefit of exemption from passing the above examination upon completion of 45 years of age. The appellant contended that since he completed 45 years of age on 1.6.1994, he may be granted exemption from passing Lower Standard Departmental Examination and may be granted increments on that basis. Since the appellant's request came to be rejected by the respondents, the appellant filed the petition praying for the aforesaid relief.

3. In response to the notice issued by this Court, affidavit-in-reply dated 24.9.1998 came to be filed by the Registrar, City Civil Court, Ahmedabad stating that the Government of Gujarat, vide Resolution dated 31.7.1990, converted the then existing posts of Section Writer on the establishment of various Courts to the posts of Junior Clerk in the pay scale of Rs. 950-1500. On the date of the said resolution, there were 27 posts of Section Writer on the establishment of City Civil Court, Ahmedabad. However, the petitioner was not one of those Section Writers because he was already promoted as Junior Clerk in the year 1981. It is also submitted in the affidavit-in-reply that the said circular dated 12.3.1992 is not applicable to the petitioner because the

petitioner has completed the age of 45 years on 1.6.1994 i.e. after issuance of the circular. It is further pointed out that the decision that the petitioner is not entitled to the benefit of the said circular is also approved by the High Court vide letter dated 23.3.1996 about which the petitioner was informed vide letter dated 2.4.1996 (Annexure E to the petition).

4. In his rejoinder affidavit, the petitioner admitted that he completed 45 years of age on 1.6.1994, but contended that on correct interpretation of the circular, the petitioner was entitled to the benefit of exemption. The petitioner further contended that one Mr. S.S.Sonara who was appointed as a Section Writer on 11.2.1970 and was promoted as a Clerk on 1.2.1971 was given benefit of the said circular dated 12.3.1992 and that the petitioner is similarly situate as said Mr. Sonara.

5. After hearing the learned Counsel for the parties, the learned Single Judge held that the circular dated 12.3.1992 covers only those clerks who were converted from Section Writers and who had reached the age of 45 years on the date of the circular. Hence the benefit of the said circular cannot be extended to all the Clerks serving in various Courts as and when they attain the age of 45 years. The learned Single Judge further held that the petitioner was not converted as a Clerk from the post of Section Writer, but the petitioner was given regular promotion from the post of Section Writer to the post of Clerk and, therefore also, the petitioner is not entitled to claim the benefit of exemption under the aforesaid circular dated 12.3.1992.

It is the aforesaid order which is under challenge in this appeal.

6. At the hearing of this appeal also, Mr. P.M.Bhatt, learned Counsel appearing for the appellant reiterated the contentions raised before the learned Single Judge and submitted that the benefit of circular was not intended to be confined to those Clerks who had completed 45 years of age on the date of issuance of the circular, but the said benefit is available to all the Clerks as and when they attain the age of 45 years. Secondly, it is submitted that the grievance about discrimination has not been dealt with by the learned Single Judge though it is referred to in para 3 of the judgment.

7. On the other hand, Mr. Premal Joshi, learned AGP for the State and Mr. Pardiwala for respondents no. 2

and 3 have submitted that the said circular is correctly interpreted by the learned Single Judge and it was intended to apply to only those Clerks who had attained the age of 45 years on the date of issuance of circular i.e. 12.3.1992. As regards the plea of discrimination, it is submitted that if any erroneous benefit has been given to any employee by any District Judge on the basis of an incorrect interpretation of the circular dated 12.3.1992, the same does not confer any right on the appellant. It is also submitted that the High Court has not approved the grant of any such benefit.

8. Having heard the learned Counsel for the parties, we are of the view that the learned Single Judge has rightly held that the benefit of the circular cannot be extended to the Clerks serving in various Courts as and when they attain the age of 45 years. The circular is confined only to those persons who had attained the age of 45 years on the date of the circular. In this connection, reference may also be made to Government Resolutions dated 1.1.1999 and 4.1.2000 which are produced at Annexures I and J to the further affidavit filed by the appellant in this appeal. In the Preamble to the resolution dated 1.1.1999, it is stated that although passing of a departmental examination is stipulated as a necessary condition of service for promotion to higher post, sometimes such examination is not held for a long period and there is no fault of the employee for the examination not being held for administrative reasons. In such circumstances, the employees who have completed 45 years of age when the departmental examination is first held should be granted exemption from appearing at the departmental examination. Such a request was made by the Employees' Federation and, therefore, the Government Resolution provided that the Government has decided to accept such requests subject to three conditions stated therein. Two of those conditions came to be deleted by the subsequent Government Resolution dated 4.1.2000. It is not necessary to go into the details of those conditions because the Government Resolution dated 1.1.1999 conferred the benefit of exemption from passing the departmental examination only in favour of those employees who had completed 45 years of age before the date when the departmental examination for the concerned post was first held and the employee was not at fault for the delay in holding the examination for administrative reasons.

9. In the facts of the instant case, it is an admitted position that before the petitioner first appeared at the Lower Standard Departmental Examination,

the petitioner had not completed even 36 years of age and, therefore, even the analogy of the Government Resolution dated 1.1.1999 cannot be of any assistance to the appellant. By office letter dated 25.8.2000, the Officer on Special Duty of this Court, on its administrative side, has informed the subordinate Courts that the Government Resolutions dated 1.1.1999 and 4.1.2000 are not made applicable to the staff members working on the establishment of the subordinate Courts in the State. A copy of the said letter is taken on record.

10. In view of the above discussion, it is clear that the learned Single Judge was right in rejecting the appellant's contention on the question of interpretation of circular dated 12.3.1992.

11. Coming to the plea of alleged discrimination, the appellant cannot be said to be in the same class as Mr. S.S.Sonara who had completed 45 years of age on 1.12.1989 (as stated by the petitioner himself in para 8 of the rejoinder affidavit) i.e.before issuance of the Circular.

12. At the hearing of this appeal, the learned Counsel for the appellant has sought to place reliance on the orders of exemption passed by the District Judge in case of Clerks on the establishment of subordinate Court wherein the Clerks were granted exemption from passing Lower Standard Departmental Examination upon completion of 45 years of age. Apart from the fact that such a contention was not raised in the pleadings before the learned Single Judge, we are of the view that when the circular dated 12.3.1992 is capable of only one interpretation, any orders issued by any District Judge on erroneous interpretation of the said circular cannot confer any right upon the appellant to claim exemption from passing the concerned Departmental Examination. We cannot, however, refrain from observing that once the circular dated 12.3.1992 came to be interpreted by the learned Single Judge of this Court, the said interpretation ought to have been brought to the notice of all the subordinate Courts so that no inconsistent orders are passed by placing different interpretations on the said circular.

13. Subject to the aforesaid observations, the appeal is dismissed.

(Kshitij R.Vyas,J.)

(M.S.Shah,J.)

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